

unable to comply with one or more of the requirements specified in paragraphs (a) through (f) of this section, it may, upon petition and approval, accommodate the lack of compliance in a reasonable, logical, technically sound manner, considering the appropriateness of the alternative. A narrative of the situation, as well as any calculations and results determined, must be documented.

[59 FR 7860, Feb. 16, 1994, as amended at 59 FR 36966, July 20, 1994; 60 FR 6032, Feb. 1, 1995; 60 FR 40008, Aug. 4, 1995; 62 FR 9883, Mar. 4, 1997; 67 FR 8737, Feb. 26, 2002; 72 FR 60579, Oct. 25, 2007]

EDITORIAL NOTE: At 62 FR 68207, Dec. 31, 1997, § 80.91 was amended by revising paragraph (e)(1)(iii) and adding paragraph (f)(2)(ii); however, these amendments could not be incorporated because (e)(1)(iii) did not exist, and (f)(2)(ii) already existed in the 1997 edition of this volume. For the convenience of the user, the revised and added text is set forth as follows:

#### § 80.91 Individual baseline determination.

- \* \* \* \*
- (e) \* \* \*
- (1) \* \* \*
- (iii) For facilities determined to be closely integrated gasoline producing facilities and for which EPA has granted a single set of baseline fuel parameter values per this paragraph (e)(1)(i):
- (A) All reformulated gasoline and anti-dumping standards shall be met by such closely integrated facilities on an aggregate basis;
- (B) A combined facility registration shall be submitted under §§ 80.76 and 80.103; and
- (C) Record keeping requirements under §§ 80.74 and 80.104 and reporting requirements under §§ 80.75 and 80.105 shall be met for such closely integrated facilities on an aggregate basis.

- \* \* \* \*
- (f) \* \* \*
- (2) \* \* \*
- (ii) [Reserved]
- \* \* \* \*

#### § 80.92 Baseline auditor requirements.

(a) *General requirements.* (1) Each refiner or importer is required to have its individual baseline determination methodology, resulting baseline fuel parameter, volume and emissions val-

ues verified by an auditor which meets the requirements described in this section. A refiner or importer which has the anti-dumping statutory baseline as its individual baseline is exempt from this requirement.

(2) An auditor may be an individual or organization, and may utilize contractors and subcontractors to assist in the verification of a baseline.

(3) If an auditor is an organization, one or more persons shall be designated as primary analyst(s). The primary analyst(s) shall meet the requirements described in paragraphs (c) (2) and (3) of this section and shall be responsible for the baseline audit per paragraph (f) of this section.

(b) *Independence.* The auditor, its contractors, subcontractors and their organizations shall be independent of the submitting organization. All of the criteria listed in paragraphs (b) (1) and (2) of this section must be met by every individual involved in substantive aspects of the baseline verification.

(1) *Previous employment criteria.* (i) None of the auditing personnel, including any contractor or subcontractor personnel, involved in the baseline verification for a refiner or importer shall have been employed by the refiner or importer at any time during the three (3) years preceding the date of hire of the auditor by the refiner or importer for baseline verification purposes.

(ii) Auditor personnel may have been a contractor or subcontractor to the refiner or importer, as long as all other criteria listed in this section are met.

(iii) Auditor personnel may also have developed the baseline of the refiner or importer whose baseline they are auditing, but not as an employee (per paragraph (b)(1)(i) of this section). Those involved only in the development of the baseline of the refiner or importer need not meet the requirements specified in this section.

(2) *Financial criteria.* Neither the primary analyst, nor the auditing organization nor any organization or individual which may be contracted or subcontracted to supply baseline verification expertise shall:

(i) Have received more than one quarter of its revenue from the refiner or importer during the year prior to the

date of hire of the auditor by the refiner or importer for auditing purposes. Income received from the refiner or importer to develop the baseline being audited is excepted; nor

(ii) Have a total of more than 10 percent of its net worth with the refiner or importer; nor

(iii) Receive compensation for the audit which is dependent on the outcome of the audit.

(c) *Technical ability.* All of the following criteria must be met by the auditor in order to demonstrate its technical capability to perform the baseline audit:

(1) The auditor shall be technically capable of evaluating a baseline determination. It shall have personnel familiar with petroleum refining processes, including associated computational procedures, methods of product analysis and economics, and expertise in conducting the auditing process, including skills for effective data gathering and analysis.

(2) The primary analyst must understand all technical details of the entire baseline audit process.

(3)(i) The primary analyst shall have worked at least five (5) years in either refinery operations or as a consultant for the refining industry.

(ii) If one or more computer models designed for refinery planning and/or economic analysis are used in the verification of an individual baseline, the primary analyst must have at least three (3) years experience working with the model(s) utilized in the verification.

(iii) EPA may, upon petition, waive one or more of the requirements specified in paragraph (c)(3) of this section if the technical capability of the primary analyst is demonstrated to the satisfaction of the Director of the Office of Mobile Sources, or designee.

(d) *Auditor qualification statement.* A statement documenting the qualifications of the auditor, primary analyst(s), contractors, subcontractors and their organizations must be submitted to EPA (Fuel Studies and Standards Branch, Baseline Auditor, U.S. EPA, 2565 Plymouth Rd., Ann Arbor, MI 48105).

(1) *Timing.* (i) The auditor qualification statement may be submitted by

the refiner or importer prior to baseline submission (per § 80.93) or by a potential auditor at any time. The auditor will be deemed certified when all qualifications are met, to the satisfaction of the Director of the Office of Mobile Sources, or designee. If no response is received from EPA within 45 days of application or today's date, whichever is later, the auditor shall be deemed certified.

(ii) The auditor qualification statement may be submitted by the refiner or importer with its baseline submission (per § 80.93). If the auditor does not meet the criteria specified in this section, the baseline submission will not be accepted.

(2) *Content.* The auditor qualification statement must contain all of the following information and may contain additional information which may aid EPA's review of the qualification statement:

(i) The name and address of each person and organization involved in substantive aspects of the baseline audit, including the auditor, primary analyst(s), others within the organization, and contractors and subcontractors;

(ii) The refiners and/or importers for which the auditor, its contractors and subcontractors and their organizations do not meet the independence criteria described in paragraph (b) of this section; and

(iii) The technical qualifications and experience of each person involved in the baseline audit, including a showing that the requirements described in paragraph (c) of this section are met.

(e) *Refiner and importer responsibility.* (1) Each refiner and importer required to have its baseline verified by an auditor (per paragraph (a)(1) of this section) is responsible for utilizing an auditor for baseline verification which meets the requirements specified in paragraphs (b) and (c) of this section.

(2) A refiner's or importer's baseline submission will not be accepted until it has been verified using an auditor which meets the requirements specified in paragraphs (b) and (c) of this section.

(f) *Auditor responsibilities.* (1) The auditor must verify that all baseline submission requirements are fulfilled.

This includes, but is not limited to, the following:

(i) Verifying that all data is correctly accounted for;

(ii) Verifying that all calculations are performed correctly;

(iii) Verifying that all adjustments to the data and/or calculations to account for post-1990 data, work-in-progress, and/or extenuating or other circumstances, as allowed per § 80.91, are valid and performed correctly.

(2) The primary analyst shall prepare and sign a statement, to be included in the baseline submission of the refiner or importer, stating that:

(i) He/she has thoroughly reviewed the sampling methodology and baseline calculations; and

(ii) To the best of his/her knowledge, the requirements and intentions of the rulemaking are met in the baseline determination; and

(iii) He/she agrees with the final baseline parameter, volume and emission values listed in the baseline submission.

(3) The auditor may be subject to debarment under U.S.C. 1001 if it displays gross incompetency, intentionally commits an error in the verification process or misrepresents itself or information in the baseline verification.

[59 FR 7860, Feb. 16, 1994, as amended at 67 FR 8737, Feb. 26, 2002]

#### § 80.93 Individual baseline submission and approval.

(a) *Submission timing.* (1) Each refiner, blender or importer shall submit two copies of its individual baseline to EPA (Fuel Studies and Standards Branch, Baseline Submission, U.S. EPA, 2565 Plymouth Rd., Ann Arbor, MI 48105) not later than June 1, 1994.

(2) If a refiner must collect data after December 15, 1993 (per § 80.91(d)(2)), it shall submit two copies of its individual baseline to EPA (per § 80.93(a)(1)) by September 1, 1994.

(3)(i) All petitions required for baseline adjustments or methodology deviations will be approved or disapproved by the Director of the Office of Mobile Sources, or designee. All instances where a "showing" or other proof is required are also subject to approval by the Director of the Office of Mobile Sources, or designee.

(ii) Petitions, "showings," and other associated proof may be submitted to EPA prior to submittal of the individual baseline (per paragraphs (a)(1) and (a)(2) of this section). EPA will attempt to review and approve, disapprove or otherwise comment on the petition, etc., prior to the deadline for baseline submittal.

(iii) In the event that EPA does not comment on the petition prior to the deadline for baseline submittal, the refiner or importer must still comply with the applicable baseline submittal deadline.

(iv) Petitions submitted prior to the deadline for baseline submittals shall be submitted to the EPA at the following address: Fuels Studies and Standards Branch, Baseline Petition, U.S. EPA, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

(4) If a baseline recalculation is required per § 80.91(f), documentation and recalculation of all affected baselines shall be submitted to EPA within 30 days of the previous baseline(s) becoming inaccurate due to the circumstances outlined in § 80.91(f).

(b) *Submission content.* (1) Individual baseline submissions shall include, at minimum, the information specified in this paragraph (b).

(i) During its review and evaluation of the baseline submission, EPA may require a refiner or importer to submit additional information in support of the baseline determination.

(ii) Additional information which may assist EPA during its review and evaluation of the baseline may be included at the submitter's discretion.

(2) Administrative information shall include:

(i) Name and business address of the refiner or importer;

(ii) Name, business address and business phone number of the company contact;

(iii) Address and physical location of each refinery, terminal or import facility;

(iv) Address and physical location where documents which are supportive of the baseline determination for each facility are kept;

(3) The chief executive officer statement shall be: